



**NEVADA COMMISSION ON ETHICS  
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION  
REGARDING JUST AND SUFFICIENT CAUSE**

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| REQUEST FOR OPINION NO. 04-39  |
| SUBJECT: RICHARD W. TRUESDELL,<br>CHAIRMAN<br>CITY OF LAS VEGAS<br>PLANNING COMMISSION |

**A. JURISDICTION:**

Based on legal research and analysis, Mr. Truesdell meets the criteria of a public officer as defined by NRS 281.4365. As such, the Commission has jurisdiction over the complaint.

**B. REPORT OF INVESTIGATIVE ACTIVITIES:**

- Reviewed Request for Opinion 04-39 (Tab B)
- Reviewed subject's response dated July 31, 2004 (Tab C)
- Reviewed lease summary between Richard Truesdell and Earl Morimoto regarding the 201 Las Vegas Blvd. property (see Tab C, subject's exhibit A)
- Reviewed management contract entered into by Richard Truesdell and Earl Morimoto (see Tab C, subject's exhibit B)
- Reviewed minutes of City of Las Vegas Planning Commission for February 12, 2004 and March 11, 2004
- Conducted comprehensive search regarding subject's corporate holdings, property interests, UCC filings, and civil and criminal judgments
- Conducted legal research regarding whether planning commission members are public officers pursuant to NRS 281.4365

**C. RECOMMENDATIONS:**

The Executive Director hereby recommends the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hear and render an opinion in this matter relating to the provisions of:

- NRS 281.481(2);
- NRS 281.481(5);
- NRS 281.501(2); and
- NRS 281.501(3).

**SPECIFIC REASON:**

No allegation or credible evidence of any fact that amounts to or supports a violation by any public officer of the above provision of NRS Chapter 281.

**D. SUMMARY OF REQUEST FOR OPINION:**

The request for opinion alleges violations of NRS 281.481(2), NRS 281.481(5), NRS 281.501(2), and NRS 281.501(3) by City of Las Vegas Planning Commission Chairman Richard Truesdell. The complaint alleges Mr Truesdell violated NRS 281.481 subsections 2 and 5 by voting upon agenda items at two separate Las Vegas Planning Commission meetings concerning land parcels in close proximity to real estate in which Mr. Truesdell had an ownership interest or a pecuniary interest. The complaint alleges that the properties in question are within the downtown redevelopment zone overlay area, and that both of Mr. Truesdell's properties are located in the centennial overlay zone.

Of the two meetings listed in the complaint, the first meeting occurred on February 12, 2004. According to the complaint, Chairman Truesdell failed to disclose an ownership interest in the "Cornerstone" building prior to voting to deny the applicant's request to develop property in close proximity to the Cornerstone building. The second meeting occurred on March 11, 2004. The complaint alleges Chairman Truesdell failed to disclose an ownership interest in an undeveloped parcel of land prior to voting to deny the applicant's special use permit requesting to develop a parcel of land in close proximity to Mr. Truesdell's undeveloped parcel.

The complaint further alleges that Mr. Truesdell violated NRS 281.501 subsections 2 and 3 by:

- Failing to disclose an ownership interest in 201 Las Vegas Blvd. (the Cornerstone Building) at the February 12, 2004 Planning Commission meeting;
- Voting to deny the applicant's request to develop property at 601 South Casino Blvd., an undeveloped parcel in close proximity to the Cornerstone Building; and
- Failing to disclose an ownership interest in an undeveloped parcel located at the intersection of Colorado Blvd. and 3<sup>rd</sup> and 4<sup>th</sup> Streets (4<sup>th</sup> Street property), a parcel in close proximity to land located at 800 Casino Center Blvd. for which applicants were requesting a special use permit at the March 11, 2004 Planning Commission meeting.

**E. SUMMARY OF SUBJECT'S RESPONSE:**

In his response, Mr. Truesdell provided the following information:

With regard to alleged violations of NRS 281.481(2) and (5), relating to a vote to deny applicant's request to develop property at 601 South Casino Blvd. while having an ownership interest in the building located at 201 Las Vegas Blvd.:

- Though Mr. Truesdell and his wife share an equal ownership interest in Cornerstone, a corporation enacted under the appropriate Nevada statutes, neither the Cornerstone corporation nor Mr. Truesdell's spouse nor he own an interest other than a leasehold interest in the property located at 201 Las Vegas Blvd.;
- The 201 Las Vegas Blvd. property is owned by Earl M. Morimoto; and
- His vote on the parcel located at 601 South Casino Blvd. in no way affected his pecuniary interest in the property located at 201 Las Vegas Blvd. because he does not hold any ownership interest in this property.

With regard to the alleged violations of NRS 281.481(2) and (5), relating to a vote to deny applicant's special use permit in relation to a parcel of land located at 800 Casino Center Blvd., Mr. Truesdell provided the following information regarding the 4<sup>th</sup> Street property:

- He does not stand to further his pecuniary interest in the 4<sup>th</sup> Street property by voting to deny a special use permit for a bail bond service at 800 Casino Center Blvd.; and
- Neither he nor his wife gained a financial benefit as a result of his vote.

With regard to the alleged violation of NRS 281.501(2) and (3), relating to his alleged failure to disclose his ownership interest in 201 Las Vegas Blvd. prior to voting on applicant's request before the Planning Commission on February 12, 2004:

- He was not required to disclose his ownership interest in the 201 Las Vegas Blvd. property because it was outside the statutory zone of required notice for development;
- He does not have an ownership interest in the building or a commitment in a private capacity to the interest of others, and as such was not required to abstain from voting on the matter; and
- Because neither he nor Mr. Morimoto would gain any financial benefit greater than any other person in the same commercial area would gain, he did not have to abstain from voting on the matter.

With regard to the alleged violations of NRS 281.501(2) and (3), relating to his alleged failure to disclose his property interests located at 4<sup>th</sup> Street and Colorado Blvd. prior to voting on the applicant's request for a special use permit for a bail bond service located at 800 Casino Center Blvd. before the Planning Commission on March 11, 2004:

- The 4<sup>th</sup> Street parcel is not within the statutory 750 foot radius of the property voted on;
- It was not necessary for the property owner at 800 Casino Center Blvd. to disclose the request for a special use permit to him because he was outside of the radius

- area, and therefore it was not necessary for Mr. Truesdell to disclose his ownership interest in the 4<sup>th</sup> Street property at the Planning Commission meeting;
- Denying the special use permit would neither increase nor decrease the property value surrounding his 4<sup>th</sup> Street property and therefore, he would not gain any financial benefit; and
  - He obtained legal advice from the City Attorney with regard to disclosure requirements and was advised he did not have to disclose his interests.

**F. PERTINENT STATUTES AND REGULATIONS:**

**NRS 281.481**

**General requirements; exceptions.** A code of ethical standards is hereby established to govern the conduct of public officers and employees:

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2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason.

\* \* \* \* \*

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

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**NRS 281.501**

**Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.**

1. Except as otherwise provided in subsection 2, 3 or 4, a public officer may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.

2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect

to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

3. In a county whose population is 400,000 or more, a member of a county or city planning commission shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His direct pecuniary interest; or
- (c) His commitment to a member of his household or a person who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his direct pecuniary interest or his commitment described in paragraph (c) where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the direct pecuniary interest or commitment.

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8. As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

**G. RESULTS OF INVESTIGATION:**

The Executive Director presents the investigative findings for consideration by the panel by issue.

***Allegations regarding NRS 281.481(2) relating to the February 12, 2004 vote regarding the property located at 601 South Casino Blvd. and its effect on the property located at 201 Las Vegas Blvd.:***

The complaint questions whether Mr. Truesdell used his position as Chairman of the Planning Commission to secure or grant an unwarranted privilege or advantage for himself or any other person to whom he has a commitment in a private capacity when he voted to deny a variance for property located at 601 South Casino Blvd. The complaint asserts this vote secured a privilege for the property located at 201 Las Vegas Blvd., which is property in which Mr. Truesdell holds an alleged ownership interest, and which is in close proximity to the 601 South Casino Blvd. property.

Mr. Truesdell asserts that neither he nor his wife hold an ownership interest in the property located at 201 Las Vegas Blvd., and therefore no personal pecuniary interest was furthered by his vote to deny applicant's request to develop property at 601 S. Casino Blvd. Investigative activities support Mr. Truesdell's assertion that neither he nor his wife maintain an ownership interest in this building. Rather, Mr. Truesdell leases property located in this building from the building's owner, Mr. Earl Morimoto. A copy of the lease agreement was provided for review by Truesdell in his response (see Tab C, subject's exhibit A). If this were Mr. Truesdell's only interest in the property, his vote to deny a development plan on property located nearly six blocks away would not appear to support a violation of NRS 281.481(2).

However, Mr. Truesdell's financial interest in the building is slightly more involved. According to the subject's response, Cornerstone Company is contracted to manage the property located at 201 Las Vegas Blvd. Cornerstone is a company owned jointly by Mr. Truesdell and his wife. The management agreement for the building is signed by Mr. Truesdell and Mr. Morimoto (see Tab C, subject's exhibit B). Cornerstone's compensation under the management agreement is the greater of \$1,200 per month or 5 percent of the gross rent receipts collected. It stands to reason that an increase in the number of tenants or an increase in rent for existing tenants would increase Cornerstone's compensation under the management agreement. Therefore, Chairman Truesdell is in a position where his vote could have the potential to provide a financial benefit vis-à-vis an increase in the rental income for the building. Clearly, if Mr. Truesdell had voted to deny a development permit for a large commercial building designed to lease space immediately adjacent to 201 Las Vegas Blvd. and which would be in direct competition with the Cornerstone building for tenants, this could potentially violate statute by conferring a business advantage upon himself, his wife, and Mr. Morimoto.

In reality, Mr. Truesdell's vote was related to property located nearly 6 blocks away from Cornerstone. The question, then, is whether Mr. Truesdell's vote to deny a site development plan for this property secured an unwarranted privilege or advantage for either himself or his wife through Cornerstone company or for Mr. Morimoto. Mr.

Truesdell maintains that because Cornerstone company does not hold any ownership interest in the 201 Las Vegas Blvd. property, the granting or denying of an application for a waiver of the Downtown Centennial Plan Transportation and Parking Standards for a commercial parking lot has absolutely no effect on the pecuniary interests of Cornerstone's leasehold estate in the building. However, if denying a waiver of the parking standards would result in either increasing the rent paid by the tenants at 201 Las Vegas Blvd. or boosting the tenancy occupancy at this location, Mr. Truesdell could be securing an economic advantage for himself, his wife, and Mr. Morimoto. There is currently insufficient evidence to make a determination regarding this issue. It is not clear the effect, if any, the denial of such a waiver may have on a parcel of property located nearly 6 blocks away. The complaint fails to establish how the vote directly or indirectly effected the 201 Las Vegas Blvd. property. Similarly, the investigation yielded no conclusive evidence of any direct or indirect personal gain resulting from the vote.

The investigation also yielded no conclusive evidence regarding any direct or indirect monetary gain to Mr. Morimoto – a person to whom Mr. Truesdell has a commitment in a private capacity pursuant to NRS 281.501(8). Again, while it seems clear that both Mr. Truesdell and Mr. Morimoto would serve to benefit from an increase in tenants or an increase in property value, it remains speculative whether Mr. Truesdell's vote to deny a waiver of parking standards would result in any such benefit. Absent any credible evidence to support the realization of a financial benefit by Mr. Truesdell, his wife, or Mr. Morimoto, the Executive Director recommends the panel find just and sufficient cause does not exist to substantiate a violation of NRS 281.481(2).

***Allegations regarding NRS 281.501(2) and (3) relating to the February 12, 2004 vote on the 601 South Casino Blvd. property and its effect on the 201 Las Vegas Blvd. property:***

The evidence supports the fact that Mr. Truesdell voted to deny applicant's request for a waiver of parking standards for a parcel located at 601 South Casino Blvd. NRS 281.501(2) provides a public officer shall not vote upon or advocate the passage of a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by his pecuniary interests or his commitment in a private capacity to the interests of others. The property at 601 South Casino Blvd. is within six blocks of the Cornerstone property. Mr. Truesdell asserts the property that he manages is outside the 750-foot radius for mandatory disclosure of the application to area property owners, and thus he should not be required to disclose his interest in the property he manages or to abstain from voting. He further asserts he did not have to disclose or abstain from voting because there is neither a pecuniary interest nor a commitment in a private capacity to the interests of others in this situation.

Staff analysis differs. Mr. Truesdell does have a pecuniary interest in the property located at 201 Las Vegas Blvd. due to the management agreement between Cornerstone and Mr. Morimoto. Further, he has a commitment in a private capacity to Mr. Morimoto. Therefore, Mr. Truesdell has a vested financial interest in seeing both the value of the property rise and the number of tenants increase. With such commitments and interests,

it must be determined whether the commitments and interests actually rise to a level which would require disclosure.

In the context of the complaint, it is unclear what effect Chairman Truesdell's vote on a property nearly six blocks away will have on the property Cornerstone manages. In order to establish a conflict of interest sufficient to support a violation of NRS 281.501, the independent judgment of a reasonable person would have to be affected under the same circumstances. While voting to deny a parking standards waiver may have some effect on properties in close proximity, there is no indication that it will have a financial effect on the Cornerstone property.

In the *Scheffler opinion* (see Tab D), the Commission opined that where Scheffler, a member of the Henderson City Council, voted to deny a permit to allow Thirstbusters, a competing business in the vicinity of Scheffler's real estate interests, to increase its number of slot machines, it was unlikely that a reasonable person in Mr. Scheffler's position would have considered the matter and voted on it without anticipating the impact this would have on Mr. Scheffler's own real estate interests. Additionally, the Commission ruled that the "mere ownership of land in the vicinity of property which would be benefited by a proposed rezoning may be sufficient to disqualify a public officer from voting for it." (*NCOE Opinion No. 95-21, 95-23 & 95-37, consolidated*).

Contrary to *Scheffler*, the impact of denying a development plan at 601 South Casino Blvd. is not clear. The Commission opined that the mere ownership of land in the vicinity of property which would be benefited may be sufficient to require abstention. One can only speculate as to the direct or indirect impact Mr. Truesdell's vote may have on property located at 201 Las Vegas Blvd, nearly 6 blocks away. In *Scheffler*, the Commission did not establish a *per se* rule but rather, offered guidance with regard to property located in the vicinity of land to be voted upon. If evidence indicated a clear benefit accruing to the property located at 201 Las Vegas Blvd., Mr. Truesdell would have been required to disclose his interests and possibly abstain from voting. However, any financial effect accrued by denying a development plan six blocks from the Cornerstone property is uncertain, speculative, and likely did not require either disclosure or abstention by Mr. Truesdell. Without a clear conflict of interest, it becomes unnecessary to speculate regarding the independence of judgment of Mr. Truesdell.

NRS 281.501(3) prohibits planning commission members from advocating or voting on matters where the independence of judgment of a reasonable person in his position would be materially affected by his acceptance of a gift or loan; his *direct* pecuniary interest; or his commitment to a member of his household or a person who is related to him by blood, adoption, or marriage within the third degree of consanguinity or affinity. Unlike NRS 281.501(2), this subsection does not prohibit the planning commission member from voting or advocating where the independence of judgment of a reasonable person would be materially affected *by a commitment in a private capacity to the interests of others*. Accordingly, Mr. Truesdell argues that his management contract with Mr. Morimoto would not enter into the equation here. A literal reading of the statute does require a direct pecuniary interest. Therefore, a violation under NRS 281.501(3) would only be



supported where Mr. Truesdell's (or his wife's) direct pecuniary interests were positively influenced. Absent any credible evidence to support the realization of a financial benefit by Mr. Truesdell or his wife in relation to the vote, the Executive Director recommends the panel find just and sufficient cause does not exist to substantiate a violation of NRS 281.501(2) or 281.501(3).

***Allegations regarding NRS 281.481(2) relating to the March 11, 2004 vote regarding the property located at 800 Casino Center Blvd. and its effect on the 4<sup>th</sup> Street Property:***

The complaint questions whether Mr. Truesdell's vote to deny development of a parcel of land located at 800 Casino Center Blvd. secured an unwarranted privilege for Mr. Truesdell in violation of NRS 281.481(2). Mr. Truesdell asserts that his vote to deny a special use permit to develop the land at 800 Casino Center Blvd. for use as a bail bond service in no way secures him or his wife any pecuniary benefit because of his ownership of the 4<sup>th</sup> Street property.

To support a violation of NRS 281.481(2), Mr. Truesdell must have used his position as Chairman of the Planning Commission to secure himself or a person to whom he has a commitment in a private capacity a pecuniary benefit. Similar to the analysis provided above, Mr. Truesdell's vote to deny the special use permit might trigger a violation of statute only if there was an unwarranted privilege being secured by the vote. There is no evidence of any benefit that would accrue to Mr. Truesdell, or his wife vis-a-vis Cornerstone company, by voting to deny a special use permit to construct a bail bond service at 800 Casino Center Blvd. Any such allegation is speculative at best, and the complaint fails to provide credible evidence to support the realization by the Truesdells' of any financial benefit. Absent any credible evidence to support the realization of a financial benefit by Mr. Truesdell or his wife, the Executive Director recommends the panel find just and sufficient cause does not exist to substantiate a violation of NRS 281.481(2).

***Allegations regarding NRS 281.501(2) and (3) relating to the March 11, 2004 vote on the 800 Casino Center Blvd. property and its effect on the 4<sup>th</sup> Street property:***

The evidence supports the fact that Mr. Truesdell voted to deny applicant's request for a special use permit to develop the property located at 800 Casino Center Blvd. In order for a violation of NRS 281.501(2) or (3) to occur, Mr. Truesdell would have to have a conflict of interest sufficient to trigger the provisions requiring disclosure and/or abstention. Nevada ethics law is designed to prevent the perception of impropriety where a public official is serving two masters. In this instance, as discussed in relation to the February 12 vote, there is no evidence provided within the complaint or discovered in the course of the investigation that demonstrates any effect on the 4<sup>th</sup> Street property as a result of Mr. Truesdell's March 11<sup>th</sup> vote. Although the 4<sup>th</sup> Street property is located across a major intersection from 800 Casino Center Blvd., it would be purely speculative to say any development of the 4<sup>th</sup> Street property would be in direct competition with the any potential development of property at 800 Casino Center Blvd. Absent any other credible evidence substantiating a direct conflict, the Executive Director recommends the panel find just and sufficient cause does not exist to substantiate a violation of NRS 281.501(2) or 281.501(3).

***Allegation of violation of NRS 281.481(5)***

The complaint fails to provide any evidence of ‘insider’ information Mr. Truesdell may have had regarding both agenda items, and further fails to substantiate how Mr. Truesdell specifically used information not available to the public to further his pecuniary interests or the interests of any other person or business entity. There is no evidence any such non-public information existed. Absent any credible evidence to support this allegation, the Executive Director recommends the panel find just and sufficient cause does not exist to substantiate a violation of NRS 281.481(5).

Based upon the preceding analysis, the Executive Director finds no credible evidence to substantiate the allegations within the complaint, and supports a finding that no just and sufficient cause exists to present any of the matters contained therein to the full Commission.

**H. CONCLUSION:**

The Executive Director hereby recommends that the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on the allegations that the subject violated NRS 281.481(2), NRS 281.481(5), NRS 281.501(2), and NRS 281.501(3), and further that the allegations be dismissed.

**DATED:** March 23, 2005

Stacy M. Jennings  
**STACY M. JENNINGS, MPA**  
**EXECUTIVE DIRECTOR**